



# OPERATIONAL GUIDANCE NOTE

## CHINA

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#### 1. Introduction

- 1.1** This document provides UKBA caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of China, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## 2. Country assessment

2.1 Caseowners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

2.3 **Actors of protection.** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

2.4 The People's Republic of China (PRC) is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount authority. Party members hold almost all top government, police and military positions. The ultimate authority is vested in the Political Bureau (Politburo), comprising twenty-five senior members of the CCP and its nine-member Standing Committee. Hu Jintao holds the three most powerful positions as CCP general secretary, president and chairman of the Central Military Commission. Civilian authorities generally maintain effective control of the security forces.<sup>1</sup>

2.5 China has all the structures a modern democratic state would expect to have, with (in theory) a separation of powers between the different functions of state similar to most western democracies. But all structures are subordinate to the leadership of CCP. Key laws are passed by the National People's Congress (NPC) and its Standing Committee. The NPC has around two thousand members, and only meets in full session for a fortnight every March. Outside that time, a Standing Committee of around three hundred members carries out business. Members are 'elected' from Provincial and Municipal People's Congresses, who are in turn 'elected' from People's Congresses below them. Only at the lowest level are members 'elected' by the public, but from a very narrow slate of approved candidates. Villages are now officially regarded as theoretically self-governing (and therefore not part of the formal government hierarchy). There are direct popular elections to village committees. They are responsible for providing some public services, and receive a budget from higher authorities to do so. The quality of the elections varies, but they are more or less free and fair.<sup>2</sup>

2.6 The Chinese Armed Forces are grouped within the People's Liberation Army (PLA). In November 2009, it was estimated that the regular forces numbered 2, 285,000, of whom approximately 800,000 were conscripts. The army numbered 1,600,000, the navy 244,000 (including a naval air-force of 26,000) and the air force 300,000. There were also estimated

<sup>1</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>2</sup> FCO Country Profiles: November 2010 [China](#)

to be 510,000 Reserves, in addition to the estimated 660,000 members of the People's Armed Police.<sup>3</sup> The key domestic security agencies include the Ministry of State Security, the Ministry of Public Security (MPS) and the People's Armed Police. The People's Liberation Army is primarily responsible for external security, but also carries out some domestic security duties. Local authorities also utilise civilian municipal security forces, known as 'urban management' officials, to enforce the law.

- 2.7** The MPS coordinates the police force, which is organised into specialised police agencies and local, county and provincial jurisdictions. Judicial oversight of the police is limited, and checks and balances absent. Corruption at a local level is widespread. Police and urban management officials engaged in extra-judicial detention, extortion and assault. In 2009, the Supreme People's Procuratorate acknowledged continuing widespread abuse in law enforcement. In 2009 domestic news media reported the convictions of public security officials who had beaten to death suspects or prisoners in their custody.<sup>4</sup>
- 2.8** Security forces work closely with the CCP at all levels. During 2010, the CCP continued to expand its network of extralegal 'stability maintenance' offices, both at neighbourhood level and in some enterprises. These agencies are tasked with upholding the ruling party's monopoly on political power, including by suppressing the peaceful exercise of basic civil liberties. A study by scholars at Tsinghua University estimated that the government had spent 514 billion yuan ((US\$80 billion) in 2010 on 'stability maintenance', nearly equivalent to the country's military budget.<sup>5</sup>
- 2.9** The MPS oversees all domestic police activity. It is responsible for police operations and prisons and has dedicated departments for internal political, economic, and communications security. Its lowest organisational units are the public security stations, which maintain close day to day contact with the public. The People's Armed Police Force, which has an estimated total strength of 1.5 million personnel, is organised into 45 divisions, covering the areas listed below.<sup>6</sup>
- The Public Security Police (the main police force) accountable to the MPS;
  - The State Security Police, who safeguard state security, prevent foreign espionage, sabotage and conspiracies;
  - The Prison Police, who guard prisons and labour camps, and are accountable to the Ministry of Justice;
  - The Judicial Police, who maintain security at courts and escort suspects to and from court. They also administer the death penalty, not directly attached to any Ministry;
  - The Armed Police, who patrol the border, guard VIPs, foreign embassies and important government buildings, and are accountable to MPS and the Central Military Committee;
  - The Patrol Police, who are employed to deter crime and safeguard major events, and are also accountable to MPS and the Central Military Committee.<sup>7</sup>
- 2.10** The Chinese police have access to a National Computer Database, known as the Golden Shield Project. Its aim is to improve policing, and there are strict regulations on the use of the database. It holds information on population information, criminal records information, information on criminal fugitives, information on stolen vehicles, information on passports and exit/entry data, information on registered cars and drivers, information on police officers and information on key fire-prevention units. All police departments at county level and above (i.e. police departments at provincial, city and county levels) and most grass-roots units (police units below county level) can now connect to this system. There are some small police departments in remote areas that cannot yet connect to Golden Shield.<sup>8</sup>

<sup>3</sup> COIS Report, China, section 8.12, August 2011 [China Report](#)

<sup>4</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>5</sup> COIS Report, China, section 8.5, 24 August 2011 [China Report](#)

<sup>6</sup> COIS Report, China, section 8.4, 24 August 2011 [China Report](#)

<sup>7</sup> COIS Report, China, 24 section 8.3, August 2011 [China Report](#)

<sup>8</sup> COIS Report, China, 24 August, section 8.5, 2011 [China Report](#)

- 2.11** The law allows police to detain suspects for up to 37 days before formal arrest. After arrest, police are authorised to detain a suspect for up to an additional seven months pending investigation of the case. Following completion of an investigation, a further 45 days of detention are allowed for the Procuratorate to determine whether or not to file criminal charges. If charges are filed, the authorities can detain a suspect for a further 45 days before initiating judicial proceedings. Consequently, pre-trial detention periods of a year or more are not unusual. In practice, the police sometimes detain persons beyond the period sanctioned by law. Chinese law stipulates that detainees are allowed to meet with defence counsel before criminal charges are filed; police often violate this right. Criminal defendants are entitled to apply for bail while awaiting trial; in practice, few suspects are actually released on bail.<sup>9</sup> The law requires notification of family members within 24 hours of detention, but individuals are often held without notification for significantly longer periods, particularly in politically sensitive cases. Police and government officials are allowed to waive this right, if the notification might interfere with the investigation of a case.<sup>10</sup>
- 2.12** The Supreme People's Court is the highest judicial agency of the state. Below this, there are Local People's Courts (higher, intermediate and basic) and also Special People's Courts, which include military, maritime and railway transport courts.<sup>11</sup> Chinese law states that the courts exercise judicial power independently, without interference from administrative organs, social organisations or individuals. However, in practice the judiciary is not independent, and judges regularly receive political guidance on pending cases. This includes instructions on legal rulings from both the government and the CCP, particularly in politically sensitive cases. The CCP Law and Politics Committee have authority to review and influence court operations at all levels of the judiciary.<sup>12</sup> Court decisions are also influenced by corruption; safeguards against corruption are vague and poorly enforced. Local governments appoint and pay local court judges, and therefore exert influence over their legal rulings. Legal awareness amongst Chinese citizens is growing, and legal reform is also making slow progress. However, the government's overt hostility towards genuine judicial independence impedes legislative improvements and defeats efforts to curtail the authority of the CPP over all judicial institutions and processes.<sup>13</sup>
- 2.13** Efforts by the authorities to silence political activists and public interest lawyers have been increased, and the government has taken steps to further limit civil society, particularly organisations and individuals involved in rights advocacy and public interest issues. The government has increasingly resorted to extralegal measures, including enforced disappearance, 'soft detention', and strict house arrest, including house arrest of family members. The authorities have allowed extra-judicial killings and executions without due process of law, prolonged illegal detention and the use of forced labour, including prison labour.<sup>14</sup>
- 2.14** *Internal relocation.* Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

<sup>9</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>10</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>11</sup> COIS Report, China, section 10.1, 24 August 2010 [China Report](#)

<sup>12</sup> COIS Report, China, section 10.3, 24 August 2011 [China Report](#)

<sup>13</sup> COIS Report, China, section 10.2, 24 August 2011 [China Report](#)

<sup>14</sup> USSD Human Rights Report 2010 [China Report](#)

- 2.15** The Chinese authorities retain the Hukou system of registration; this requires every resident to be registered with the local Public Security Bureau. Information is held on the names, dates of birth, occupations, marital status etc., on every member of each household. Chinese citizens are allowed only one place of permanent hukou registration. Any individual staying in a locality outside their hukou zone for more than three months must apply for a Temporary Residential Permit, which provides the legal basis for residence and is the key basis of legal identity. It is frequently necessary to enable individuals to work, rent accommodation, open a bank account, enter a public building, and receive registered mail.<sup>15</sup> Access to public benefits such as education and healthcare are linked to place of birth; China's 230 million migrant workers are denied access to these services when they move elsewhere within the country.<sup>16</sup>
- 2.16** Chinese law provides for freedom of movement within the country, foreign travel and repatriation. However, the government generally does not respect these rights in practice. The government maintains restrictions on the freedom to change one's workplace or residence, although the Hukou system of registration is slowly becoming less restrictive.<sup>17</sup> Obtaining a Temporary Residence Permit is often time-consuming and costly, although fees and required documentation vary greatly according to locality. Rural residents continue to migrate to the cities, where the per capita disposable income was more than four times the rural per capita income. However, many are unable to change their residence or workplace within the country.
- 2.17** It is particularly difficult for rural residents to obtain household registration in more economically developed urban areas.<sup>18</sup> Internal flight is unlikely to be an option in cases where the applicant is accepted as having a well founded fear of the authorities. Owing to the restrictions involved in the Hukou system particularly, and the rigidly enforced bureaucratic administrative systems generally in place in China, an individual would find it very difficult to avoid coming to the attention of the authorities.
- 2.18** *Caselaw.*

**JC (double jeopardy: Art 10 CL) China CG [2008] UKIAT 00036.** Upheld by the Court of Appeal. See *JC (China) v Secretary of the State for the Home Department* [2009] EWCA Civ 81. JC was further confirmed by: **YF (double jeopardy – JC confirmed) China CG [2011] UKUT 00032.**

1."There is a risk of prosecution or re-prosecution under Articles 7 and 10 of the Chinese Criminal Law for overseas offenders returned to China. However, the use of those provisions is discretionary and extremely rare. Absent particular aggravating factors, the risk falls well below the level required to engage international protection under the Refugee Convention, the ECHR, or humanitarian protection. The risk of prosecution or re-prosecution will be a question of fact in individual cases but is more likely where:-

- (a) there has been a substantial amount of adverse publicity within China about a case;
- (b) the proposed defendant has significantly embarrassed the Chinese authorities by their actions overseas;
- (c) the offence is unusually serious. Generally, snakehead cases do not have the significance they have in the West and are regarded as ordinary (but serious) crimes requiring no special treatment;
- (d) political factors may increase the likelihood of prosecution or re-prosecution; and
- (e) the Chinese Government is also particularly concerned about corruption of Chinese officialdom.

2. Prosecution under Article 7 or 10 is a fresh prosecution. The discretion to prosecute is exercised in the light of the opinion of the Chinese authorities as to whether the foreign jurisdiction dealt properly, and without undue leniency, with the offence. It can no longer be said that there is no information available on the use of that power: the China court database of cases and the NPC website guidance are maintained directly by the Chinese Government and provides guidance for judges and lawyers on the use of these powers.

<sup>15</sup> COIS Report, China, section 31, 24 August 2011 [China Report](#)

<sup>16</sup> COIS Report, China, section 31, 24 August 2011 [China Report](#)

<sup>17</sup> COIS Report, China, section 31, 24 August 2011 [China Report](#)

<sup>18</sup> COIS Report, China, section 31, 24 August 2011 [China Report](#)

3. The burden of proof does not shift to the Secretary of State in double jeopardy cases. The Court of Appeal decision in **Adam v Secretary of State for the Home Department [2003] EWCA Civ 265** is not authority for such a proposition, particularly where the decision to re-prosecute is discretionary.

4. In the light of our findings above, the decisions in **WC (no risk of double punishment) China [2004] UKIAT 00253** and **SC (double jeopardy – WC considered) China CG [2006] UKAIT 00007** are no longer factually accurate and SC should no longer be treated as country guidance.”

The above case-law has been further confirmed by the recent case of:

**YF (Double jeopardy – JC confirmed) China CG [2011] UKUT 32** which made the following findings:

“The risk of prosecution or re-prosecution will be a question of fact in individual cases but is more likely where (a) there has been a substantial amount of adverse publicity within China about a case; (b) the proposed defendant has significantly embarrassed the Chinese authorities by their actions overseas; (c) the offence is unusually serious. Generally, snakehead cases do not have the significance they have in the West and are regarded as ordinary (but serious) crimes requiring no special treatment; (d) political factors (which may include the importance attached by the Chinese authorities to cracking down on drugs offenders) may increase the likelihood of prosecution or re-prosecution; and (e) the Chinese Government is also particularly concerned about corruption of Chinese officialdom.”

“Re-prosecution/double punishment of a returnee through the administrative disciplinary procedure system is extremely unlikely, since for a person to be considered under this system by virtue of an overseas offence the Chinese authorities must have decided his case was not serious enough to justify re-prosecuting him through the criminal law system.”

#### **HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31**

In this case, the Supreme Court established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

Ministers have said that we must accept that the HJ (Iran) test applies in full to religious persecution claims. It should also be applied when considering asylum applications based on the applicant's adherence to the practice of Falun Gong, since the Chinese authorities regard Falun Gong as an undesirable cult and/or an illegal religion.

#### **SP and Others (Tibetan – Nepalese departure – illegal - risk) People's Republic of China CG [2007] UKAIT 00021.** The AIT summarised its conclusions as follows: (para 119):

- (a) “There are no figures for Tibetans who are returned from the West to the only two points of removal to the People's Republic of China – Beijing and Shanghai -and we do not consider it safe to infer that the figures we have for those returned to China in recent years include any Tibetans.
- (b) The Chinese authorities are concerned with any activity by Tibetans which they consider to be “splittist”- that is, any activity which indicates that a Tibetan might wish Tibet region to break away from China. Any support for the Dalai Lama is seen as “splittist” and as furthering the cause of Tibetans nationalism, which the Chinese authorities continue to want to crush. Those Tibetans who leave China unlawfully on the Tibet/Nepal route are seen as being supporters of the Dalai Lama.
- (c) Tibetans who having left China unlawfully on the Tibet/Nepal route now face removal by the United Kingdom, are reasonably likely to be considered as “splittists”.
- (d) Accordingly, Tibetans who have made their way to the West having left China unlawfully on

the Tibet/Nepal route face a real risk on return of detention and ill-treatment which amounts to persecution.

(e) Tibetans who left China legally, and who did not leave because they had a well founded fear of persecution, would not be likely to face persecution on return at the airports in Beijing or Shanghai or subsequently upon re-entry to Tibet region.

(f) The Chinese regime in the Tibet region is repressive and the individual facts of each case must be considered carefully as it is a society where there is a considerable amount of surveillance. A Tibetan who is able to show he faces a real risk on return arising out of past adverse experiences in the Tibet region, should be able to succeed in his or asylum claim, irrespective of what the position is as regards failed asylum seekers generally.

(h) However, even if the issue of internal relocation did arise, given the terms of the [OGN and COIS report] and the evidence pointing to likely state persecution of Tibetans who have left Tibet illegally via Nepal, there would not be any viable internal relocation alternative.”

The AIT further stated (para 121) that in future cases it will be very important that the Secretary of State states his position upon, and that clear findings are made regarding, the following issues in particular:

- a) “Whether or not an appellant had a well founded fear of persecution before leaving China,
- (b) Whether or not he or she left China legally or without authority; and
- (c) The route by which they should be considered to have left China (that is, from the mainland or on the Tibet/Nepal route).”

**LJ (China) [2005] UKIAT 00099 Heard 24 February 2005, Promulgated 10 May 2005.**

The IAT found that before reaching a conclusion on whether prison conditions were inhuman and degrading more detailed evidence would be required regarding:

- The frequency with which prisoners are subjected to degrading treatment; History, circumstances, length of sentences and nature of the offences they have been convicted for.
- Length of any sentence of imprisonment (as opposed to the maximum sentence) which is likely to be imposed for the individual regarding the offence or offences they have committed.
- There is no indication that imprisonment for those unable to pay fines is either the normal course
- or reasonably likely to be imposed where they have left illegally (para 11d).

**L (China) [2004] EWCA (Civ) 1441** made the following finding:

Falun Gong - 'We are not prepared to accept that authoritarian pressure to cease the practice of Falun Gong in public would involve the renunciation of core human rights entitlements' (para 33). There are no Falun Gong membership lists and 'anyone can become a member or cease to be a member at any time and practise Falun Gong exercises by him/herself in the privacy of his/her home without significant risk of being ill-treated' (para 33). The case also finds that Falun Gong members are not a social group as membership is a matter of choice rather than an immutable characteristic, although remits the case back to the IAT to consider whether they qualify under imputed political opinion. (Note the CoA did not feel it knew enough about Falun Gong to enable it to make a finding on whether it counts as a religion) (para 35).

**[2004] UKIAT 00138 TC (China) Heard 27 February 2004, Promulgated 10 June 2004.** The IAT accepted that the appellant who had four children had been fined 30,000 Yen for breaching the One Child Policy. He had been beaten by the police and officials had damaged his house and taken his furniture. In the course of the encounter, the appellant had hit a police officer. As he was unable to pay the fine, he went into hiding and left China illegally.

The IAT found that even if the appellant was arrested and detained, they do not consider that the resultant pre-trial detention, the sentence and the post-trial detention would give rise to serious harm to the appellant that would breach Article 3. Conditions in both the prison system and the administrative detention system facilities are harsh and ill-treatment does occur. However, there was no evidence as to what proportion of prisoners in China are estimated to experience ill-treatment. In order to be satisfied there is a real risk, the objective evidence considered as a whole needs to demonstrate a consistent pattern of gross, flagrant or mass violations of the human rights of the prisoners. If there was such a consistent pattern, the Tribunal would expect to find more evidence than there is of the scale and frequency of human rights abuses (paras 9-12).

The fact that the “appellant’s wife had not met with any adverse consequences since his departure

was rightly treated by the adjudicator as a strong indication that the authorities were not continuing to pursue his family for violation of the One Child policy” (para 6). If however the appellant was to return and there was a renewed requirement to pay the fine, even if this amounted to a significant proportion of his annual wage, this could not be considered to be so disproportionate as to give rise to a violation of Article 3.

This case is currently the subject of a legal challenge (**HL China, CG**) with respect to the findings on the One Child Policy. This section will be further updated when the determination of that case has been promulgated.

**TC (China) [2004] UKIAT 00138 TC Heard 27 February 2004.**

The IAT found that even if the appellant was arrested and detained, they do not consider that the resultant pre-trial detention, the sentence and the post-trial detention would give rise to serious harm to the appellant that would breach Article 3. Conditions in both the prison system and the administrative detention system facilities are harsh and ill-treatment does occur. However, there was no evidence as to what proportion of prisoners in China are estimated to experience ill-treatment. In order to be satisfied there is a real risk, the objective evidence considered as a whole needs to demonstrate a consistent pattern of gross, flagrant or mass violations of the human rights of the prisoners. If there was such a consistent pattern, the Tribunal would expect to find more evidence than there is of the scale and frequency of human rights abuses (paras 9-12).

**MH (Risk – Return – Falun Gong) China CG [2002] UKIAT 04134.** The IAT accepted that “ordinary Falun Gong practitioners have on a significant number of occasions been subjected to human rights abuses of various kinds, however, it is only in respect of Falun Gong activists that the scale and level of interference with their human rights has been sufficient to warrant a conclusion that upon return they would face a real risk, as opposed to a possible risk, of persecution or serious harm.” (para 11)

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in China. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

### **3.5 Credibility**



- 3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.
- 3.6 Falun Gong/Falun Dafa**
- 3.6.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their involvement with Falun Gong/Falun Dafa.
- 3.6.2 *Treatment.*** The Falun Gong movement was established in 1992 by Li Hongzhi. Based on the Chinese ancient art of qigong or energy cultivation and fused with elements of other religions, it emphasises high moral standards and good health amongst its followers who combine gentle exercises with meditation. Despite the spiritual component within Falun Gong, it does not consider itself a religion and has no clergy or places of worship. Prior to the ban on Falun Gong by the government in July 1999, it was estimated that there were 70 million practitioners of Falun Gong.<sup>19</sup> Before the ban, followers would gather in public parks and squares to practise the five exercises/movements. The middle-aged and those from the middle class were reported to comprise the sect's main following although its ranks included people from all walks of life, including students, the elderly and the peasantry.<sup>20</sup>
- 3.6.3** Falun Gong sources estimated that since 1999 at least 6,000 Falun Gong practitioners have been sentenced to prison, and more than 100,000 practitioners have been sentenced to Re-education Through Labour (RTL) camps.<sup>21</sup> The government has continued to maintain a severe campaign against adherents of Falun Gong, which it has described as an 'evil cult'; it has continued an extrajudicial security apparatus designed to identify and stamp out Falun Gong activities. During the past decade the authorities have carried out an unprecedented campaign, imprisoning large numbers of practitioners and abusing them in detention. Those who do not renounce their beliefs in detention are subject to torture. This includes credible reports of deaths in custody, and the use of psychiatric experiments. 'Transforming' Falun Gong adherents remains a high priority for government security officials. It is difficult to determine numbers of Falun Gong adherents in detention because they are frequently incarcerated in RTL camps and mental health institutions.<sup>22</sup>
- 3.6.4** Amnesty International (*Annual Report 2011 (events of 2010) published 13 May 2011*) noted that the Chinese authorities renewed the campaign to 'transform' Falun Gong practitioners, which required prisons and detention centres to force Falun Gong inmates to renounce their beliefs. Those considered to be 'stubborn' i.e. those who refuse to sign a statement to this effect, are typically tortured until they cooperate; many die in detention or shortly after release. Falun Gong practitioners continued to be targeted in security sweeps, particularly prior to major national events.<sup>23</sup>
- 3.6.5** According to the *USSD International Religious Freedom Report 2010*, it is difficult to confirm all aspects of reported abuses of Falun Gong adherents because they are often prevented from meeting with foreign reporters and officials. There are credible reports from NGOs and international media that detentions of Falun Gong practitioners increase around sensitive dates. In some areas, neighbourhood groups are reportedly instructed to inform

<sup>19</sup> US State Report on Religious Freedoms: [China 2010](#)

<sup>20</sup> COIS Report, China, section 21.28, 24 August 2011 [China Report](#)

<sup>21</sup> COIS Report, China, section 21.19, 24 August 2011 [China Report](#)

<sup>22</sup> US State Report on Religious Freedoms: [China 2010](#)

<sup>23</sup> COIS Report, China, section 21.20, 24 August 2011 [China Report](#)

on Falun Gong members, in return for monetary rewards.<sup>24</sup> Official Chinese government statements confirm long-term and arbitrary arrests, forced renunciations of belief, and torture in detention. Officials use Article 300 of the Criminal Procedure Code, which deals with individuals accused of crimes associated with 'evil cults'. One Falun Gong-affiliated research NGO, using public sources from within China, confirmed that 2,513 individuals were detained in the previous year, many in Hebei and Shandong Provinces and also in Shanghai. Security officials reportedly offered rewards to anyone who would identify Falun Gong adherents. Almost all of those detained were sentenced to prison or RTL.<sup>25</sup>

**3.6.6** Family members reported the harsh treatment of Falun Gong practitioners, including the use of torture. Practitioners were also subjected to detention in psychiatric hospitals on the orders of public security officials. There is no mechanism for appealing such psychiatric commitments. Falun Gong practitioners detained in psychiatric hospitals were reportedly administered medicine without their consent, and subjected to electric shock treatment.<sup>26</sup> There have also been allegations of government-sanctioned organ harvesting from incarcerated practitioners over the last several years. The UN Special Rapporteur on Torture called for an independent investigation, and also for continued international attention to the allegations of organ harvesting from prisoners, torture in custody and psychiatric experiments conducted on adherents. The UN Special Rapporteur reported that Falun Gong adherents allegedly make up two thirds of the alleged victims of torture presented to him in China.<sup>27</sup> The Vice Minister of Health, Huang Jiefu, stated in August 2009 that inmates were not a proper source for human organs, and prisoners must give written consent for their organs to be removed.<sup>28</sup>

**3.6.7** In addition to reports of harassment and detention of adherents, the Falun Gong movement has claimed that family members, including children, of practitioners are also targeted for arbitrary arrest, detention and harassment including expulsion from school and re-education through labour. There are accounts of family members allegedly being arrested in order to pressure adherents who are wanted by authorities into surrendering, or otherwise punished for the adherents' Falun Gong activities. Many children of Falun Gong members are reportedly left unattended and sometimes homeless following the arrest of their parents.<sup>29</sup>

**3.6.8** It is possible for Falun Gong adherents to practise in private, without necessarily coming to the attention of the authorities. . It has been reported that "many followers still risk arrest and beatings to perform the exercises, but they do them in their homes instead of public parks".<sup>30</sup> However, there is a real risk of denunciation. According to the Falun Dafa Information Centre, thousands of adherents were arrested in 2009; among these documented cases, victims were arrested on the basis of being known as Falun Gong practitioners, even where this identity consisted of studying Falun Gong tenets and practising its meditation exercises in the privacy of their homes. In many cases, adherents were abducted after they were discovered in possession of Falun Gong books and materials.<sup>31</sup>

**3.6.9 See also: section 2.3 – 2.18**

[Actors of Protection](#)  
[Internal Relocation](#)  
[Caselaw](#)

**3.6.10 Conclusion.** There is widespread repression of Falun Gong by the Chinese authorities and credible Falun Gong practitioners who have come to the attention of the authorities are

<sup>24</sup> US State Report on Religious Freedoms: [China 2010](#)

<sup>25</sup> COIS Report, China, section 21.21, 24 August 2011 [China Report](#)

<sup>26</sup> US State Report on Religious Freedoms: [China 2010](#)

<sup>27</sup> COIS Report, China, section 8.15, 24 August 2011 [China Report](#)

<sup>28</sup> US State Report on Religious Freedoms: [China 2010](#)

<sup>29</sup> COIS Report, section 21.43, China, 24 August 2011 [China Report](#)

<sup>30</sup> COIS Report, China, section 21.34, 24 August 2011 [China Report](#)

<sup>31</sup> COIS Report, China, section 21.35, 24 August 2011 [China Report](#)

likely to face ill-treatment amounting to persecution in China. They will therefore qualify for a grant of asylum under the 1951 Convention by reason of imputed political opinion, or their religious beliefs, even though it is not a religion in the conventional sense

**3.6.11** The Court of Appeal found in **L (China) v SSHD [2004] EWCA (Civ) 1441** that anyone can become a member or alternatively cease to be a member of Falun Gong at any time and can practise Falun Gong exercises on their own in the privacy of their home without significant risk of being ill-treated. The IAT found in **[2005] UKIAT 00122** that there will not normally be any real risk from the Chinese authorities for a person who practices Falun Gong in private and with discretion. This caselaw remains current; however, recent country information on the risk to practitioners, including those practising at home, suggests that there is a real risk of denunciation and a consequent risk of persecution. Where it is found that a Falun Gong practitioner will be “discreet” on return to China, the reasons for such discretion will need to be considered in the light of **HJ (Iran)**.

### **3.7. Involvement with pro-Tibetan/pro-independence political organisations**

**3.7.1** Some applicants apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their involvement with pro-Tibetan/pro-independence political organisations.

**3.7.2 Treatment.** There are 5.4 million Tibetans within China, accounting for 0.44 per cent of the population. The total population of the Tibetan Autonomous Area (TAR) is 2.6 million (based on the most recent census of 2000).<sup>32</sup> The Karze/Kardze (Ganzi in Tibetan) Tibetan Autonomous Prefecture (TAP) located in Sichuan province is the most volatile area outside of the TAR. Tibetan activists have also been detained in Qinghai and Gansu Provinces. During 2010, severe repression of human rights continued in the Tibetan Autonomous Region, and the Autonomous Tibetan prefectures and counties in other provinces. The Chinese authorities continued to commit serious human rights abuses, including extra-judicial killings, torture, arbitrary arrests, extra-judicial detention and house arrest. The preservation of Tibet’s unique religious, cultural and linguistic heritage remained a concern.<sup>33</sup> It is reported that any expression of Tibetan identity is labelled as separatist and criminal, and therefore dealt with harshly.<sup>34</sup>

**3.7.3** The people mainly at risk in the Tibetan areas are active political dissidents, especially those seeking Tibetan independence, and Tibetan Buddhist monks and nuns. Activities attracting prison terms are those classified as endangering state security or promoting separatism. They include espionage, bomb blasts, leaflet distribution advocating independence, and possessing the Dalai Lama’s picture or reading the Dalai Lama’s works. Of the dissidents, the majority belong to the clerical order.<sup>35</sup>

**3.7.4** Some government officials have stated that possessing or displaying pictures of the Dalai Lama was not illegal, asserting that most Tibetans chose not to display his picture. However, other officials deemed photographs and books about the Dalai Lama to be a breach of the law under The Implementing Regulations. Even so, many Tibetans display his picture in their homes, in locket, or on mobile phones. They also display pictures of the 11<sup>th</sup> Panchen Lama, Gendun Choekyi Nyima the chosen successor of the Dalai Lama. Merchants who ignore restrictions and sell Dalai Lama related images and audiovisual materials report that the authorities frequently impose fines. The authorities appear to view possession of such materials as evidence of separatist sentiments.<sup>36</sup>

**3.7.5** There continued to be serious human rights violations against ethnic Tibetans and separatists in 2009 and 2010. The scale of human rights violations related to the

<sup>32</sup> COIS Report, China, section 23.1, 24 August 2011 [China Report](#)

<sup>33</sup> USSD Human Rights Report 2010 [China Report](#) (Tibet)

<sup>34</sup> COIS Report, China, section 23.6, 24 August 2011 [China Report](#)

<sup>35</sup> COIS Report, China, section 23.9, 24 August 2011 [China Report](#)

<sup>36</sup> US State Report on Religious Freedoms: [China 2010](#)

suppression of protests was far greater than previously believed; Chinese forces broke international law, including the prohibitions against disproportionate use of force, torture and arbitrary detention, as well as the right to peaceful assembly, despite government claims denying this. Further violations, including disappearances, wrongful convictions and imprisonment, persecution of families, and the targeting of people suspected of sympathising with the protest movement.<sup>37</sup>

- 3.7.6** Previous government suppression of peaceful Tibetan Buddhist religious activity played a primary role in stoking major demonstrations in 2008 in the TAR as well as Tibetan areas elsewhere in China. These led to violent crackdowns and the detention of hundreds of monks and nuns. Tibetan protests against government interference with religious and cultural life, and the imprisonment of religious leaders, continued through 2010. At least 443 Tibetan Buddhist monks, nuns and other clerics are currently imprisoned in China. The Chinese government has failed to provide information about those detained, missing or disappeared, and those accused are not provided with legal representation. Since the 2008 protests, a security presence has been maintained at most monasteries and nunneries, and local government officials have increased their campaign requiring monks and nuns to sign statements denouncing the Dalai Lama. Those who refuse to do so have been expelled from their monasteries, imprisoned and tortured.<sup>38</sup>
- 3.7.7** In September 2010, there were reportedly 824 Tibetan political prisoners imprisoned in Tibetan areas; of these, 765 were Tibetans detained on or after the March 2008 demonstrations, and 59 were Tibetans detained prior to the demonstrations. Of the 765, approximately 58% of them were Tibetan Buddhist ‘religious professionals’ (monks, nuns, etc). Some reports estimated the number of political prisoners to be much higher, given that an unknown number of prisoners continue to be held under the Re-education-Through-Labour system.<sup>39</sup> On 11 February 2009 *The Guardian* stated, “China has sentenced 76 people and detained more than 950 since last year’s deadly riots in Tibet, state media reported today... Last month, the authorities in Lhasa launched a ‘strike hard’ campaign in which at least 81 people were detained and thousands checked by security officials”.<sup>40</sup>
- 3.7.8** The Chinese government continues to refuse repeated requests from the international community for access to Gendun Choekyi Nyima, the boy designated by the Dalai Lama as the 11<sup>th</sup> Panchen Lama, and his spiritual successor. Government officials claim that he is being ‘held for his own safety’. The Chinese authorities insist that another boy, Gyaltzen Norbu, chosen by the Chinese government, is the ‘true’ Panchen Lama, despite the great significance placed on the Dalai Lama’s original choice by most Tibetans.<sup>41</sup> The Dalai Lama himself has accused the Chinese authorities of having killed ‘tens of thousands of Tibetans’ and of having transformed their Himalayan homeland into a ‘hell on earth’. In 2009, he stated that Tibetans’ “religion, culture, language, identity are near extinction. The Tibetan people are regarded like criminals, deserving to be put to death”. He asserted that Chinese attempts to develop the infrastructure of Tibetan areas are in reality, attempts to Sinicise Tibet.<sup>42</sup>
- 3.7.9 See also: section 2.3 – 2.18**  
[Actors of Protection](#)  
[Internal Relocation](#)  
[Caselaw](#)
- 3.7.10 Conclusion.** It is clear that the Chinese authorities may take serious action against Tibetans expressing political or religious views and that this treatment may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities, a grant of asylum will be appropriate.

<sup>37</sup> COIS Report, China, section 23.5, 24 August 2011 [China Report](#)

<sup>38</sup> COIS Report, China, section 23.17, 24 August 2011 [China Report](#)

<sup>39</sup> COIS Report, China, section 23.11, 24 August 2011 [China Report](#)

<sup>40</sup> COIS Report, China, section 23.12, 24 August 2011 [China Report](#)

<sup>41</sup> COIS Report, China, section 23.20-21, 24 August 2011 [China Report](#)

<sup>42</sup> COIS Report, China, section 23.10, 24 August 2011 [China Report](#)

**3.7.11** Case owners should be aware that, of the individual accounts considered in ***SP and Others***, two were found to be incredible. The appeals were only allowed because the AIT was prepared to accept that the appellants had left Tibet illegally via Nepal and, on this basis alone, the AIT considered that there would be a real risk of treatment amounting to persecution on return. For cases potentially falling within the ambit of ***SP and Others***, in addition to examining the credibility or otherwise of the substantive claim (including ethnicity, nationality and place/country of origin or habitual residence), case owners should also take particular care in establishing both the circumstances of the applicant's exit from China (i.e. was it lawful?) and also, full details of the route to the UK. (i.e. did the applicant travel via Nepal or did he leave China by another route?). Findings on all material aspects of the claim should be reflected in the written decision.

**3.7.12** A grant of asylum will not be appropriate solely on the basis of Tibetan ethnicity if an individual has left Tibet lawfully by a route other than Nepal. However, in accordance with the conclusions in ***SP and others***, if case owners accept that an ethnic Tibetan has left China unlawfully and via the Nepal route, a grant of asylum will be appropriate.

### **3.8 Involvement with illegal religious organisations**

**3.8.1** Some applicants apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their religious beliefs and practices and/or involvement with illegal religious organisations.

**3.8.2 *Treatment.*** The Constitution and laws provide for freedom of religious belief and the freedom not to believe, although the constitution only protects religious activities defined as 'normal'. Citizens do not have the right to sue the government on the basis of the religious freedom protections in the constitution. The government sought to restrict legal religious practice to government sanctioned organisations and registered places of worship and to control the growth and scope of the activity of both registered and unregistered religious groups, including house churches. To be considered legal, religious groups must register with a government of China affiliated patriotic religious association (PRA) associated with one of the five recognised religions: Buddhism, Taoism, Islam, Protestantism and Catholicism. Buddhists comprise the largest body of organised religious believers.<sup>43</sup> Other religious and spiritual groups are outlawed; in many parts of the country, authorities have charged religious believers unaffiliated with a patriotic religious association will 'illegal religious activities' or disrupting social stability.<sup>44</sup>

**3.8.3** There are strict regulations on the practice of even registered religions. Members of the Chinese Communist Party (CCP) are discouraged from participating in religious activities. Proselytising in public, unregistered places of worship, or by foreigners, is not permitted, and many religious and spiritual groups are outlawed (see **3.6**, Falun Gong). Proselytising in registered places of worship and in private settings is permitted. Some religious groups, for example Protestant 'house' churches, or Catholics loyal to the Vatican, are not outlawed, but are not permitted to openly hold religious services unless they affiliate with a PRA.<sup>45</sup>

**3.8.4** Growing numbers of Chinese citizens are being allowed to practise their religion legally, but the Government strictly controls the affairs of all religious groups and actively represses and harasses any religious activity that the Communist Party regards as not being normal. Religious activity in China is governed by the National Regulations on Religious Affairs (NRRRA). However, religious repression of unregistered religious groups varies by region, province, politics and ethnicity. In some areas, local officials do allow unregistered groups with thousands of members to practice openly.<sup>46</sup> In many other areas, Catholics,

<sup>43</sup> COIS Report, China, section 18.1-7, 24 August 2011 [China Report](#)

<sup>44</sup> USSD International Religious Freedom Report [China 2010](#)

<sup>45</sup> USSD International Religious Freedom Report [China 2010](#)

<sup>46</sup> COIS Report, China, section 18.1-7, 24 August 2011 [China Report](#)

Protestants, Buddhists and members of other spiritual movements have refused to join officially sanctioned organisations, as they are unwilling to release the names and contact details of their followers, submit leadership decisions to the government for approval, or seek permission in advance for all major religious activities or theological positions. The US Secretary of State has designated China a 'Country of Particular Concern' under the International Religious Freedom Act (IRFA) for particularly severe violations of religious freedom since 1999.<sup>47</sup>

- 3.8.5** Religious groups outside of the five patriotic religious associations have great difficulty in obtaining legal status and are vulnerable to coercive and punitive action by the Public Security Bureau (PSB) and Religious Affairs Bureau (RAB). However, implementation of the regulations is subject to wide regional variation. In parts of the country, including many rural areas, unregistered churches openly hold religious services attended by hundreds. By contrast, in other areas local officials punished the same activities by confiscating and destroying property, and imprisoning leaders and worshippers. Several religious leaders reported that their applications for registration were rejected due to their refusal to affiliate to a PRA, and thus lose their spiritual independence.<sup>48</sup>
- 3.8.6** Governmental repression of religious freedom remained severe in Tibetan areas and in the XUAR [Xinjiang Uighur Autonomous Region] in 2010. Official tolerance of groups associated with Buddhism and Taoism has been greater than that for groups associated with other religions.<sup>49</sup> However, followers of Tibetan Buddhism faced more restrictions on their religious activity and ability to organise than Buddhists in other parts of the country.<sup>50</sup> The 'patriotic education' campaigns in the Tibetan Autonomous Region and other Tibetan regions, which often required monks and nuns to sign statements denouncing the Dalai Lama, and other new restrictions on religious freedom were major factors that led monks and nuns to mount peaceful protests on 10 March 2008. Since then, government restrictions continue to interfere with the ability of monks and nuns to carry out the teaching and practice of Tibetan Buddhist religious traditions. Restrictions include enforced 'patriotic education' and enforced 'legal education'. The Government continued to blame the Dalai Lama publicly for instigating the March 2008 unrest, and have repeatedly stated that his successor must be approved by the Government. The recently appointed TAR governor described the Dalai Lama as "the most significant cause of instability in Tibet".<sup>51</sup> (See also section 3.7).
- 3.8.7** Local authorities' handling of unregistered Protestant groups varies in different regions of the country. In some regions unregistered groups or house churches with hundreds of members meet openly, with the full knowledge of local authorities. In other areas, meetings of more than a handful of family members and friends are strictly proscribed. Unregistered groups are more likely to encounter difficulties when their membership is large or when they have established links with other unregistered groups or foreign organisations. During 2010 numerous reports of detention and harassment of unregistered Protestant groups and individuals, particularly pastors continued. Harassment of unregistered Catholic bishops, priests and laypersons continued, including government surveillance and lengthy detentions. A number of Catholic Bishops loyal to the Vatican have been in detention for several years.<sup>52</sup>
- 3.8.8** The government tightly controlled the practice of Islam and official repression of Uighur Muslims in the XUAR continued in 2010. Regulations restricting Muslims' religious activity, teaching, and places of worship continued to be implemented forcefully and Uighur Muslims and Christians were detained. Following unrest in 2009, the authorities pledged to

<sup>47</sup> USSD International Religious Freedom Report [China 2010](#)

<sup>48</sup> COIS Report, China, section 18.6, 24 August 2011 [China Report](#)

<sup>49</sup> USSD International Religious Freedom Report [China 2010](#)

<sup>50</sup> USSD International Religious Freedom Report [China 2010](#)

<sup>51</sup> USSD International Religious Freedom Report [China 2010](#)

<sup>52</sup> USSD International Religious Freedom Report [China 2010](#)

crackdown more on 'illegal religious activities', which included unauthorised religious instruction and wearing religious clothing.<sup>53</sup>

### 3.8.9 See also: section 2.3 – 2.18

[Actors of Protection](#)  
[Internal Relocation](#)  
[Caselaw](#)

**3.8.10 Conclusion.** Although there are restrictions on religious freedom and the Chinese authorities seek to control religious groups, the treatment individual members of officially registered religious groups suffer on account of these restrictions does not generally amount to persecution. The majority of applicants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection.

**3.8.11** Members of unregistered religious groups face more difficulties than members of registered communities, and individuals may face intimidation and serious harassment which in some cases will amount to persecution. Where an individual is able to demonstrate that they are at serious risk of persecution on account of their beliefs and activities a grant of asylum will be appropriate. However, the levels of ill-treatment suffered will vary depending on region and the attitude of local officials and will not always reach the level of persecution.

## 3.9 Involvement with illegal political organisations

**3.9.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Chinese authorities due to their involvement with illegal political organisations.

**3.9.2 Treatment.** The law does not provide citizens with the right to change their government peacefully, and citizens cannot freely choose or change the laws and officials that govern them. The CCP retained a monopoly on political power and forbade the creation of new political parties. No substantial political opposition parties exist in China, and the CCP controls all appointments to positions of political power (see section 2).<sup>54</sup>

**3.9.3** The government has identified the China Democracy Party (CDP) and the Falun Gong spiritual movement (see Section 3.6) as subversive groups. The CDP is a banned organisation, and dozens of CDP leaders, activists and members continue to be monitored, arrested, detained or confined.<sup>55</sup> It was reported that almost all of the country's 600,000+ villages had implemented direct elections for members of local sub-government organisations known as village committees, however this direct election of officials by ordinary citizens remained narrow in scope, and strictly confined to local levels. The government estimated that one third of these elections were subject to serious procedural flaws, including corruption, vote-buying and interference by township-level and party officials.<sup>56</sup>

**3.9.4** Government officials continue to deny holding any political prisoners, asserting that the authorities detain persons not for their political or religious views, but because they have violated the law. However, through 2010, the authorities continued to confine citizens for reasons related to politics and religion.<sup>57</sup> Tens of thousands of political prisoners remained in various forms of administrative detention. Foreign NGOs estimated that several hundred persons remained in prison for the repealed crime of 'counter-revolution,' while thousands of others were incarcerated, some in prisons and others in re-education through labour camps. Others were serving sentences for offences relating to 'state security' which the Chinese authorities stated, covers crimes similar to counter-revolution. Former political

<sup>53</sup> USSD International Religious Freedom Report [China 2010](#)

<sup>54</sup> COIS Report, China, section 6 24 August 2011 [China Report](#)

<sup>55</sup> COIS Report, China, section 14 24 August 2011 [China Report](#)

<sup>56</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>57</sup> USSD Human Rights Report 2010 [China Report](#)

prisoners were frequently subjected to police surveillance. Security personnel also harassed and detained the family members of political prisoners.<sup>58</sup>

- 3.9.5** It was reported in January 2009 that Chinese lawyers, dissidents and academics who signed a document calling for political reform were being harassed by the authorities. Signatories to the Charter 08 document, published online in December 2008, were detained, questioned by police and put under pressure at work. The charter calls for a radical overhaul of China's political system by introducing elections, a new constitution and an independent judiciary. Writer and dissident (and 2010 Nobel Peace Prize winner) Liu Xiaobo was believed to be still in police detention at the end of 2010.<sup>59</sup>
- 3.9.6** **See also sections 2.3 – 2.18**  
[Actors of Protection](#)  
[Internal Relocation](#)  
[Caselaw](#)
- 3.9.7** **Conclusion.** It is clear that the Chinese authorities may take serious action against individuals involved with opposition political parties/organisations who they believe pose a threat to the state and that this treatment may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate.
- 3.10** **Forced abortion/sterilisation under 'one child policy'**
- 3.10.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Chinese authorities due to them having more than one child.
- 3.10.2** **Treatment.** Article 25 of the State Constitution states: "The State promotes family planning so that population growth may fit the plan for economic and social development." Article 49 states, "Both husbands and wives have the duty to practise family planning." While the national family planning authorities have shifted their emphasis from lowering fertility rates to maintaining low fertility rates and claim to emphasise quality of care in family planning practices, the country's birth limitation policies have retained harshly coercive elements in law and practice.<sup>60</sup> Although the government announced adjustments would be implemented to address the problem of unequal birth sex ratios, it has affirmed the orientation of its family planning policy at the highest levels, including maintaining the policy as part of the 12<sup>th</sup> Five-Year Plan that will be in effect 2011-15.<sup>61</sup>
- 3.10.3** The country's population control policy relies on education, propaganda and economic incentives as well as on more coercive measures. Those who violate the policy face disciplinary measures such as social compensation fees, job loss or demotion, loss of career opportunities, expulsion from the CPP and other administrative punishments, including in some cases the destruction of private property. Officials at all levels are subject to rewards including job promotions, or penalties based on whether they meet the population goals set by their administrative region. This provides a strong incentive for officials to employ coercive measures in enforcing population goals, and often results in skewed statistics, corruption and sometimes brutality.<sup>62</sup>
- 3.10.4** The 'one-child policy' does not restrict every couple to one child only. Some provinces have eased restrictions in some circumstances; for example, china.org, the official government portal, stated that in urban areas, if both husband and wife are only children in their families, they may be able to have two children. In most rural areas, the policy was

<sup>58</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>59</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>60</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>61</sup> COI report section 28.06 [China Report](#)

<sup>62</sup> USSD Human Rights Report 2010 [China Report](#)



more relaxed, with couple permitted to have a second child in cases where the first child was a girl ((28.13) In some remote and poor mountainous areas, farmers are allowed to have two children regardless of the sex of the first child. People who remarry may have second children if their new partners are childless.<sup>63</sup> Family planning rules in China are complex, but one child per couple is the norm in most households. If couples have a boy as their first child, the great majority will not be allowed to have a second child.<sup>64</sup>

- 3.10.5** The government announced it would drop its one-child policy for the parents of children who died in the Sichuan earthquake in 2008. The Population and Family Planning Committee in Chengdu, capital of Sichuan Province, said the exemption could also apply to those whose children were seriously injured or disabled. In addition, recognised ethnic minorities are partially exempt from the 'one child policy'. In ethnic minority areas, more preferential policies permit some families to have three children, and in the farming and pastoral areas in Xinjiang Uygur Autonomous Region, families are allowed to have four children. In Tibet's farming and pastoral areas, there is no restriction on childbirth.<sup>65</sup>
- 3.10.6** Female infants in China have a higher mortality rate than male infants, contrasting with global rates. Although the Law on the Protection of Juveniles forbids infanticide, there is evidence that female infanticide, sex-selective abortions, and abandonment and neglect of infant girls and disabled children continues, due to cultural preferences for sons combined with the one child policy.<sup>66</sup> Authorities are investigating reports that in 2011 about 20 babies were seized under the policy and put up for international adoption. Chinese media say family planning officials in Hunan province took the children from poor homes unable to pay fines for having more than one child. The Hunan provincial government is investigating the claims.<sup>67</sup>
- 3.10.7** Penalties for violating family planning laws are strict, leaving many women little choice but to abort pregnancies.<sup>68</sup> In the case of families that already had two children, one parent was often pressured to undergo sterilisation. (28.27 and 28.28). Reports of physical coercion by officials trying to meet birth targets continued through 2010. Freedom House reports that compulsory sterilisation and forced abortion by local officials have become less common, but still occur 'fairly frequently'.<sup>69</sup>
- 3.10.8** Although the law standardises implementation of the policy, enforcement varies significantly. The 'social compensation fee' may be financially overwhelming for some couples, i.e. up to 10 times a person's annual disposable income.<sup>70</sup> The law grants preferential treatment to couples who abide by the birth limits. Although the law states that officials should not violate citizens' rights, these rights, as well as penalties for violating them, are not clearly defined.<sup>71</sup> The law requires family planning officials to obtain court approvals before taking 'forcible', action, such as detaining family members or confiscating and destroying property of families who refuse to pay social compensation fees but this is not always followed in practice. It is not unknown for a second infant to be 'detained' for weeks, until the mother has signed a consent form for sterilisation; this is not general practice, but is more common in some provinces than others.<sup>72</sup> Mandatory abortion (sometimes referred to as 'remedial measures' in government reports) is explicitly endorsed as an official policy within the regulations of 18 of China's 31 provincial-led jurisdictions. In 2010, it was found that local officials continue to coerce women with unauthorised pregnancies to undergo abortions in both urban and rural areas across China.<sup>73</sup>

<sup>63</sup> COIS Report, China, section 28.1-3, 24 August 2011 [China Report](#)

<sup>64</sup> COIS Report, China, section 28.4, 24 August 2011 [China Report](#)

<sup>65</sup> COIS Report, China, section 28.12, 24 August 2011 [China Report](#)

<sup>66</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>67</sup> COIS Report, China, section 28.23 August 2011 [China Report](#)

<sup>68</sup> Freedom House: [Freedom in the world China 2011](#)

<sup>69</sup> COIS Report, China, section 28.27, August 2011 [China Report](#)

<sup>70</sup> COIS Report, China, section 28.17-20, 24 August 2011 [China Report](#)

<sup>71</sup> COIS Report, China, section 28.20, 24 August 2011 [China Report](#)

<sup>72</sup> COIS Report, China, section 28.27- 30, 24 August 2011 [China Report](#)

<sup>73</sup> COIS Report, China, section 28.02, 24 August 2011 [China Report](#)

- 3.10.9** Regulations requiring women who violate family planning policy to terminate their pregnancies still exist in the 25<sup>th</sup>, 42<sup>nd</sup> and 22<sup>nd</sup> provisions of the Population and Family Control Regulations of Liaoning, Jilin and Heilongjiang provinces respectively. An additional 10 provinces: Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi and Yunnan require unspecified “remedial measures” to deal with out-of-plan pregnancies.<sup>74</sup>
- 3.10.10** The law states that family planning bureaus will conduct pregnancy tests on married women and provide them with unspecified ‘follow-up’ services. Some provinces fined women who did not undergo periodic pregnancy tests. In some provinces, the local villagers’ or residents’ committee are permitted to ‘take measures’ and establish a deadline for terminating the pregnancy. Couples who refuse to undergo an abortion are given a warning, and if the abortion is not performed, the couple may be fined up to CNY 2,000 (\$242). Citizens who have children without permission from the government must pay social compensation fees, assume financial responsibility for all maternal health-care costs, and are denied maternity insurance benefits for leave and subsidies; rural citizens are refused future increases in land allocation.<sup>75</sup>
- 3.10.11** The government offers a number of incentives designed to encourage individuals to undergo sterilisation. These can include extended leave, extra benefits in the workplace and the right to marry if they are at risk of transmitting certain congenital defects. However, forced sterilisations continue to occur, most frequently when couples have more children than the allowable number. Women may be allowed to carry the ‘excess’ child to term, but then one member of a couple is strongly pressured to be sterilised. In some cases, they may be asked to go to a hospital under other pretences, or sterilised without consent. Additionally, if doctors find that a couple is at risk of transmitting disabling congenital defects to their children, the couple may marry only if they agree to use birth control or undergo sterilisation.<sup>76</sup>
- 3.10.12** It was reported in July 2011 that Guangdong, China’s richest and most populous province, has asked the central government to relax family planning laws. Guangdong has asked to lead a pilot project that will allow some families to have a second child. Officials are concerned about a rapidly aging population which could affect social and economic development.<sup>77</sup> There is speculation that a gradual rollback of the policy will start with pilot schemes in the five provinces of Heilongjiang, Jilin, Liaoning, Zhejiang and Jiangsu. An official at the Population and Family Planning Committee acknowledge that a change in the rules was being discussed.<sup>78</sup>
- 3.10.13** With regard to returnees from overseas, information is scarce but some reports suggest that Chinese nationals who have children while abroad may not be subject to the one-child policy. Chinese citizens studying or working in foreign countries can return with more than one child without serious problems.<sup>79</sup> A specialist stated that the policy varies considerably throughout the country and that some people in southern Fujian and Guangdong provinces had reported no problems in returning after having children abroad.<sup>80</sup> However, another analyst believed “there is no reason to expect” that women who have children abroad will be treated differently than those who give birth in China” although no specific information was cited.<sup>81</sup>

**3.10.14 See also: section 2.3 – 2.18**

**[Actors of Protection](#)**

<sup>74</sup> COIS Report, China, section 28.29, 24 August 2011 [China Report](#)

<sup>75</sup> COIS Report, China, section 28.19, 24 August 2011 [China Report](#)

<sup>76</sup> COIS Report, China, section 28.37, 24 August 2011 [China Report](#)

<sup>77</sup> BBC News: 11 July 2011 [Province wants relaxation of China's one-child policy](#)

<sup>78</sup> The Independent 12 September 2010 [China rethinks its controversial one-child policy](#)

<sup>79</sup> UNHCR refworld: Immigration and Refugee Board of Canada. [China: Regulations on Family Planning of Liaoning Province](#)

<sup>80</sup> COIS report section 28.44 August 2011 [China Report](#)

<sup>81</sup> COIS Report section 28.45 August 2011 [China Report](#)

[Internal Relocation](#)  
[Caselaw](#)

**3.10.15 Conclusion.** The country's population control policy relies on education, propaganda and economic incentives as well as on more coercive measures. Those who violate the policy face severe disciplinary measures such as heavy fines, known as social compensation fees, job loss or demotion, loss of career opportunities, expulsion from the CPP and other administrative punishments, including in some cases the destruction of private property. There are also some reports of forced sterilisation and abortion. Although the one child policy is well established nationally, there are a number of exemptions that allow couples to have more than one child and also regional variations in enforcement of the policy. Case owners are advised to consider each case on its individual merits, since not all applicants will necessarily face penalties.

**3.10.16** Where applicants are likely to incur penalties, consideration should be given to the type and severity of the likely penalty, based on the particular circumstances of the applicant. Given the variation in enforcement from province to province, case owners should consult Country of Origin Information Service for details of application of the policy in the claimant's home area in individual cases. Where there is a real risk of enforced termination of pregnancy or enforced sterilisation, a grant of asylum as a member of a particular social group will be appropriate. Asylum should also be granted in cases where even though the punishment is less harsh, it is likely to have severe consequences for the individual concerned and his or her family.

### **3.11 Double Jeopardy**

**3.11.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Chinese authorities, due to their fear that they will face a re-trial based on Chinese law for a crime they have committed abroad and have already been punished for.

**3.11.2 Treatment.** Articles 8 to 12 of the Criminal Law covers the circumstances in which an individual who commits crimes outside the Peoples Republic of China (PRC) can be retried upon return to China. Article 10 states: Any person who commits a crime outside the territory and territorial waters and space of the PRC, for which according to the law he should bear criminal responsibility, may still be investigated for criminal responsibility according to this Law, even if she or he has already been tried in a foreign country. However if he has already received criminal punishment in the foreign country he may be exempted from punishment or given mitigated punishment.<sup>82</sup>

**3.11.3** The circumstances under which an individual would be punished in China for a crime committed in a foreign country, for which he had already been punished in that country, are not stipulated. The Chinese authorities are most likely to take this action if the crime had received a lot of publicity in China, if the victims were well-connected in China, if there were a political angle to the original crime or if the crimes were of a particular type that the authorities wanted to make an example of. As of July 2005 the British Embassy in Beijing is unaware of any such instances. The specific inclusion in the Criminal Law of 'exemptions' from second punishment in China for crimes committed abroad suggests that the authorities would not take further action against those convicted abroad for ordinary criminal offences.<sup>83</sup>

### **3.11.4 See also sections 2.3 – 2.18**

[Actors of Protection](#)  
[Internal Relocation](#)  
[Caselaw](#)

<sup>82</sup> COIS Report, China, section 10.15, 24 August 2011 [China Report](#)

<sup>83</sup> COIS Report, China, section 10.16, 24 August 2011 [China Report](#)

**3.11.5 Conclusion.** The Chinese legal system allows for double jeopardy in which Chinese citizens can be punished/imprisoned on return to China for crimes they have committed and been punished for in other countries. However, the IAT found in **JC (double jeopardy: Art 10 CL) China CG [2008] UKIAT 00036** that the use of the legal provisions is discretionary and extremely rare. Without particular aggravating factors, the risk falls well below the level required to engage international protection under the Refugee Convention or the ECHR.

**3.11.6** The risk of prosecution should be considered on the individual circumstances of a case and case owners should have particular regard to the factors set out at Paragraph 273 (19) of the determination. This position has been further confirmed by the recent country guidance case, **YF (Double jeopardy – JC confirmed) China CG [2011] UKUT 32 (IAC)**. Therefore, ordinary citizens who have not come to the attention of the Chinese authorities are unlikely to qualify for a grant of asylum or Humanitarian Protection.

### **3.12 Civil disturbances/criminal gangs/corruption**

**3.12.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of organised criminal gangs working in co-operation with corrupt police officers, and/or the Chinese authorities due to their involvement in civil unrest.

**3.12.2 Treatment.** The law provides for freedom of peaceful assembly; however, the government severely restricted this right in practice. The law does not allow for any challenge to the CCP leadership, or for activities that infringe the “interests of the state”.<sup>84</sup> The law allows for freedom of association, but this right is also restricted in practice. All meetings, for any purpose including sports, exercise or cultural reasons require the approval of the public security authorities. Peaceful protests are legal, but rarely permitted by the police.<sup>85</sup> The number of civil disturbances has continued to increase over recent years; such incidents are dealt with quickly, often with excessive force.

**3.12.3** The incidence of forced relocation because of urban development has increased. Protests over relocation terms or compensation, some of which included thousands of participants, are increasingly common and some protest leaders have been prosecuted. In rural areas, forced relocation has affected millions of people, and is usually due to the building of infrastructure and commercial developments. Property related disputes, usually between citizens and government authorities are often violent and are widespread in urban and rural areas.<sup>86</sup>

**3.12.4** During 2010, there were reportedly tens of thousands of protests by workers, farmers and other citizens due to public anger over wrongdoing committed by officials. As in previous years, the key grievances were confiscation of land, corruption, pollution and fatal police beatings. In addition to police brutality, security forces and hired thugs frequently used excessive force to suppress demonstrations.<sup>87</sup> There were several incidents where protesters violently attacked government buildings and police cars. In January 2010, security thugs killed a young villager following protests at land confiscation. This caused thousands to take to the streets in protest the next day, resulting in further beatings by riot police. All land is formally owned by the state, and property rights protection is ineffectual. The number of forced evictions and illegal land confiscation has increased in scale and violence in the last two years. However, in some cases, the authorities tolerated demonstrations as an outlet for pent-up anger, or agreed to protesters’ demands. Reforms to rural land-use rules announced at the end of 2008 have yet to be implemented.<sup>88</sup>

<sup>84</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>85</sup> COIS Report, China, section 14.7, 24 August 2011 [China Report](#)

<sup>86</sup> COIS Report, China, section 14.16, 24 August 2011 [China Report](#)

<sup>87</sup> COIS Report, China, section 14.11, 24 August 2011 [China Report](#)

<sup>88</sup> COIS Report, China, section 14.11, 24 August 2011 [China Report](#)

- 3.12.5** Workers are not free to organise or join unions of their own choosing. The All-China Federation of Trade Unions (ACFTU) which is controlled by the CCP and headed by a member of the Politburo is the sole legal workers' organisation. The trade union law gives the ACFTU control over all union organisations and activities, including enterprise-level unions. Independent unions are illegal. The ACFTU and its constituent unions influenced and implemented government policies on behalf of workers. The CCP used the ACFTU to communicate with and control workers.<sup>89</sup> Since 2008, strikes and labour protests throughout the country have been increasingly widespread and well-organised. This is primarily due to non-payment of wages and severance pay following the closure of large numbers of factories in the economic downturn. In 2009 - 2010, such labour disputes have increased by more than 50%.<sup>90</sup>
- 3.12.6** Organised crime is endemic throughout China and growing, due to factors such as increased migration, economic liberalisation, growing social inequalities and official corruption. Particular crimes include drug smuggling, people trafficking and extortion. Gang-related crime is acknowledged by the government as a threat to social stability and the economy, and involves murder, rape, robbery, kidnapping and assault. However, it is reported that organised crime is largely localised in China and that as groups outgrow their local area, the government cracks down with harsh penalties.<sup>91</sup>
- 3.12.7** Corruption is widespread and generates considerable public resentment. It is most acute in sectors with extensive state involvement, i.e. construction, land procurement and banking. There is no independent anti-corruption agency, but according to official figures, at least 113,000 officials were investigated and punished by government or CCP entities in 2010.<sup>92</sup> However, prosecution is selective, and the choice of targets is reportedly influenced by internal power struggles and informal personal networks.<sup>93</sup>
- 3.12.8** In Transparency International's (TI) *Corruption Perceptions Index 2010*, (CPI) released on 26 October 2010, China was placed at 78 out of 178 countries. China scored 3.5 out of 10, ten representing lowest levels of corruption.<sup>94</sup> In May 2010, Huang Guangyu, previously China's richest man, was sentenced to 14 years in prison for bribery. A number of other cases in 2010 exposed local officials or their children who had committed homicides, or caused fatalities while driving under the influence of alcohol, and had subsequently sought to exploit their privileged position to escape punishment.<sup>95</sup>
- 3.12.9** Official corruption and organised crime in China continue to be significant problems in China. The high levels of corruption may limit the effectiveness of any protection that the authorities are able or willing to offer to those that fear organised crime or corrupt officials. In cases where the applicant fears the Chinese authorities, he will be unable to approach them to seek protection.
- 3.12.10** See also sections 2.3 – 2.18  
[Actors of Protection](#)  
[Internal Relocation](#)  
[Caselaw](#)
- 3.12.11 Conclusion** In recent years there has been a significant increase in civil unrest in China mainly related to the issues of unpaid wages and land. Depending on the circumstances of the unrest these protests may be directed against the Chinese government or against corrupt local officials (often supported by organised criminal gangs). Many of these protests have involved thousands of people and some have turned violent, resulting in deaths and serious injury.

<sup>89</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>90</sup> COIS Report, China, section 36.3, 24 August 2011 [China Report](#)

<sup>91</sup> COIS Report, China, section 8.8, 24 August 2011 [China Report](#)

<sup>92</sup> COIS Report, China, section 8.10, 24 August 2011 [China Report](#)

<sup>93</sup> [Freedom House China 2011](#)

<sup>94</sup> COIS Report, China, section 17.3, 24 August 2011 [China Report](#)

<sup>95</sup> [Freedom House China 2011](#)

**3.12.12** Although the Chinese government is wary of any form of popular protest and is likely to respond harshly to protests that challenge the state's authority, the majority of these land and industrial protests are based on local issues and directed against local officials. Even when the protests are directed against the state they rarely challenge the state's authority or right to govern but instead protest against its specific policy as regards wages or land. In general, applicants from this category of claim are unlikely to be seen by the Chinese authorities as having engaged in a political act and are therefore unlikely to engage the United Kingdom's obligations under the Refugee Convention.

**3.12.13** In cases where the applicant fears the Chinese authorities, internal relocation is unlikely to be an option. However, for those applicants who fear organised gangs it would not in general be unduly harsh to relocate to another area of China even if they are not able to officially register. Therefore, the majority of applicants in this category are unlikely to qualify for a grant of asylum or Humanitarian Protection.

### **3.13 Prison conditions**

**3.13.1** Applicants may claim that they cannot return to China due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in China are so poor as to amount to torture or inhuman treatment or punishment.

**3.13.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

**3.13.3 Treatment.** Conditions in penal institutions for both political prisoners and criminal offenders are generally harsh and frequently degrading. Prisoners and detainees are generally kept in overcrowded conditions with poor sanitation. Inadequate prison capacity continues to be a problem in some areas, leading to overcrowding. Food is often inadequate and of poor quality, and many detainees rely upon supplemental food and medicines provided by relatives; however, some prominent dissidents were not allowed to receive such goods.<sup>96</sup>

**3.13.4** In many cases, Chinese prisons lack provisions for adequate sanitation, ventilation, heating, lighting, basic and emergency medical care, and access to potable drinking water. This is in contravention of Article 53 of the Prison Law. There is a lack of timely and adequate medical care for prisoners, despite assurances from officials that prisoners have the right to prompt medical treatment.<sup>97</sup> It is common for prison officials to deny privileges to prisoners, including the ability to purchase food from outside, make telephone calls and receive family visits where prisoners refuse to acknowledge their guilt. Political prisoners are housed with common criminals, who frequently beat them at the instigation of prison guards. Prisoners who are newly arrived, or refuse to admit guilt are particularly vulnerable to beatings.<sup>98</sup>

**3.13.5** Chinese law prohibits the physical abuse of detainees and forbids prison guards from extracting confessions by torture, insulting prisoners' dignity, and beating or inciting others to beat prisoners. The UN Committee Against Torture reported in December 2008 that it remained concerned about reports of abuses in custody, including the high number of deaths possibly related to torture or ill-treatment, and about the lack of investigation into these abuses and deaths in custody. It remained concerned that many acts of torture and

<sup>96</sup> USSD Human Rights Report, China 2010 [Chinese Prison conditions](#)

<sup>97</sup> USSD Human Rights Report, China 2010 [Chinese Prison conditions](#)

<sup>98</sup> USSD Human Rights Report, China 2010 [Chinese Prison conditions](#)

ill-treatment lead only to disciplinary or administrative punishment. The UN Special Rapporteur noted in 2008 that the availability of medical care within detention facilities was generally satisfactory. However, his report also noted new information concerning the lack of treatment for drug users and people living with HIV/AIDs, and regretted the lack of statistical data on the health of detainees.<sup>99</sup> The Rapporteur also noted the tangible level of fear when talking to detainees; he described entering cells, and repeatedly finding all detainees sitting cross-legged on mattresses, reading prison rules or criminal law. Such treatment goes on for most of the day, and inmates are not allowed to practise their<sup>100</sup> religion.

**3.13.6** The government has made efforts to address the issue of torture of detainees and prisoners. In May 2010, the Supreme People's Court, the Supreme People's Procuratorate and the ministries of public security, state security, and justice issued two directives regarding the exclusion of evidence obtained through torture. These included confessions of defendants and testimonies of prosecution witnesses, which underpin most criminal convictions in China. In July 2010, new rules came into effect, to exclude the use of evidence obtained by torture in certain categories of criminal cases. Despite these measures, there are reports by the US State Department, Human Rights Watch, and Amnesty International that the use of torture and other forms of ill-treatment remains endemic in prisons and other places of detention.<sup>101</sup> The government does not generally permit independent monitoring of prisons or RTL camps, and many prisoners remain inaccessible to international human rights organisations or the International Committee of the Red Cross (ICRC). However, the BBC reported in April 2009 that China had launched a three-month campaign to 'eliminate unnatural deaths' of prison inmates, following the deaths of at least five prisoners in police custody in the previous months. Although the UN Committee Against Torture reported that ill-treatment of prisoners was routine and widespread, the campaign indicates some acknowledgement by the authorities that prisoners are not treated well.<sup>102</sup>

### **3.13.7 Re-education through labour**

Re-education through Labour (RTL) is a type of administrative detention. This system allows non-judicial panels of police and local authorities, called labour re-education committees, to sentence persons to up to 4 years of detention for 'minor crimes'. These include drug use and prostitution.<sup>103</sup> Official sources maintain that the system is used to 'maintain public order, prevent and reduce crime, and provide compulsory educational reform to minor offenders'. In fact, RTL is frequently used to punish dissidents, drug addicts, petitioners, Falun Gong adherents and religious practitioners who belong to religious groups not sanctioned by the government. These include underground Christian communities and Muslim communities. According to the US Congressional-Executive Commission on China, it is used:

“...to silence critics and to circumvent the criminal procedure process... RTL is an administrative measure that allows Chinese law enforcement officials to order Chinese citizens, without legal proceedings or due process, to serve a period of administrative detention for up to three years, with the possibility of a one year extension.”<sup>104</sup>

**3.13.8** Conditions in the RTL camps are similar to those in prisons, with detainees reporting beatings, sexual assaults, lack of proper food, and no access to medical care.<sup>105</sup> Detainees are reportedly forced to work for up to twenty hours per day; their minimal salaries are withheld, and their working conditions are dangerous due to the use of toxic chemicals. Detainees are technically allowed to challenge their RTL sentences, or appeal for sentence

<sup>99</sup> COIS Report, China, section 12.2-3, 24 August 2011 [China Report](#)

<sup>100</sup> COIS Report, China, section 12.2, 24 August 2011 [China Report](#)

<sup>101</sup> COIS Report, China, section 8.20, 24 August 2011 [China Report](#)

<sup>102</sup> COIS Report, China, section 8.13-16, 24 August 2011 [China Report](#)

<sup>103</sup> COIS Report, China, section 12.16, 24 August 2011 [China Report](#)

<sup>104</sup> COIS Report, China, section 12.13, 24 August 2011 [China Report](#)

<sup>105</sup> USSD Human Rights Report, China 2010 [Chinese Prison conditions](#)

reduction or suspension. In practice, appeals are rarely successful; when prisoners are eventually released they are not permitted freedom of movement.<sup>106</sup>

### 3.13.9 Psychiatric custody (Ankang system)

There are various reports that Chinese activists and petitioners are committed to psychiatric hospitals, where they are involuntarily subjected to psychiatric treatment for political reasons. According to *'China News Weekly'* the MPS directly administers 22 high-security psychiatric hospitals for the criminally insane, known as ankang facilities. Between 1998 and May 2010, over 40,000 persons were committed to such hospitals. It is reported that political activists, persistent petitioners, underground religious believers, members of the banned Chinese Democracy Party (CDP) and Falun Gong adherents are among those housed with mentally ill patients in these institutions. Regulations concerning security officials' ability to remand an individual to an Ankang facility are unclear, and detainees have no mechanism to object to claims of mental illness by security officials. It is reported that patients in these hospitals are medicated against their will and forcibly subjected to electric shock treatment.<sup>107</sup> It is reported that increasingly, individuals incarcerated in Ankang facilities are petitioners or whistle-blowers exposing corruption. There is no legal right to appeal against committal, and individuals are effectively silenced, since legally and socially they disappear.<sup>108</sup>

### 3.13.10 Other forms of administrative detention

Other forms of administrative detention include 'custody and education', mainly for women engaged in prostitution, and those soliciting prostitution, and 'custody and training', primarily for minor criminal offenders. The minimum stay in such centres is two years, and the treatment generally includes work. Administrative detention is used to intimidate political activists and dissidents, and to prevent public demonstrations.<sup>109</sup>

### 3.13.11 Death penalty

China employs the death penalty under Article 48 of the Criminal Law. Technically this sentence is applied only to 'criminal elements who commit the most heinous crimes'. In practice, there are 68 different capital offences listed under the 1997 criminal law.<sup>110</sup> Exact numbers of executions are kept secret in China, but it is estimated that China executes more people each year than the combined total for the rest of the world; estimates for 2010 range from 2,000 to 10,000 executions.<sup>111</sup>

**3.13.12 Conclusion.** Prison conditions in China are described as harsh and often degrading, both for political prisoners and for criminal offenders, who are often housed together. There is objective evidence of security officials severely ill-treating prisoners and detainees (though this is not universal) and the number of deaths in custody is a matter for concern. Evidence indicates that some of the worst treatment is extended to political dissidents and human rights activists, although not exclusively. This treatment may include forced psychiatric incarceration/treatment, sexual, physical and psychological abuse.

**3.13.13** In many cases, conditions are unlikely to reach the Article 3 threshold, particularly for minor criminal offenders. Therefore, even where an applicant can demonstrate a real risk of imprisonment on return to China, a grant of Humanitarian Protection will not generally be appropriate. In some cases, the mistreatment will be sufficient to make removal a breach of Article 3. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors to consider include the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case, treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

<sup>106</sup> COIS Report, China, section 12.17, 24 August 2011 [China Report](#)

<sup>107</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>108</sup> COIS Report, China, section 12.11 – 12, 24 August 2011 [China Report](#)

<sup>109</sup> COIS Report, China, section 12.19, 24 August 2011 [China Report](#)

<sup>110</sup> COIS Report, China, section 13.1, 24 August 2011 [China Report](#)

<sup>111</sup> FCO Human Rights & Democracy: [Foreign & Commonwealth Office Human Rights Report, 2010](#)



## 4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to China the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favorable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Applicants may claim they cannot return to China due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** The World Health Organisation noted in 2010 (*Country Health Information Profile for China*) that overall, people in China are living longer and healthier lives. The national disease profile resembles that of a developed country, with approximately 80% of deaths due to non-communicable diseases and injuries. Among the remaining infectious diseases, hepatitis B, Tuberculosis and lower respiratory infections still account for significant mortality.<sup>112</sup> National averages, however, mask considerable regional variations and disparities across socioeconomic groups, genders and geographic localities. Millions of Chinese citizens effectively have no access to health care, either because they are too far away from the nearest hospital or medical facility, or because the cost of such health care is prohibitively high.<sup>113</sup>
- 4.4.3** Most citizens are underinsured, and continue to face high out-of-pocket costs, while 79% of citizens have no insurance at all. Remote and rural regions face problems in making available specialised care to their populations, including emergency obstetric and trauma services, adequate facilities, and trained health professionals. Senior-level officials have publicly recognized the inadequacy of healthcare infrastructure, and also problems within the pharmaceutical sector, and insufficient access to essential medicines.<sup>114</sup>
- 4.4.4** It was reported in October 2008 that the UK-based medical journal, The Lancet, is launching a major series of scientific papers in Beijing on China's plans for healthcare reform. The country is debating an ambitious programme which aims to provide health insurance for all its 1.3 billion people by 2020. The Healthy China 2020 plan is intended to

<sup>112</sup> COIS Report, China, section 30.2, 24 August 2011 [China Report](#)

<sup>113</sup> COIS Report, China, section 30.1-3, 24 August 2011 [China Report](#)

<sup>114</sup> COIS Report, China, section 30.1-6, 24 August 2011 [China Report](#)

create a universal health service; the current political leadership has committed itself to this ambitious plan. Critics say the Chinese health system presently falls far short of the needs of those it is supposed to be treating. Primary healthcare, especially for the poor, disintegrated in recent decades when the old state system was dismantled and medical fees introduced.<sup>115</sup>

## Psychiatric Treatment

**4.4.5** Mental illness accounts for approximately 20% of all disease in China, and is currently expected to rise to 25% by 2020, according to the Ministry of Health. Latest figures show there are 11 hospital beds and less than two psychiatrists for every 100,000 patients. This contrasts with the world average of more than 43 beds and nearly four psychiatrists for the same number of patients. According to official sources, at least 56 million patients with mental illness have never received any treatment, and only one in four patients with serious mental disorders are ever hospitalised.<sup>116</sup> A further problem is the high incidence of suicide amongst women and girls; various societal and cultural factors combine to account for this.<sup>117</sup> Among all the cities of China, Shanghai has the most developed psychiatric services. These are provided at municipal, district and grass-root level; they include community follow-up programmes, guardianship networks, work-therapy stations, mental health services in factories, day hospitals, night hospitals and family support groups. Services at each of the three levels-municipal, district and grass-root level are available.<sup>118</sup>

## HIV/AIDS

**4.4.6** AIDS was reported to be the top killer amongst infectious diseases in China for the first time in 2008, with 6,897 people dying between January and September 2008. The Ministry of Health did not explain this jump, but it is thought to be at least partly due to the government's improved reporting of HIV/AIDS statistics in recent years, as it begins to acknowledge the presence (and prevalence) of the disease.<sup>119</sup> The government's resource commitments to AIDS have continued to increase and comprehensive training to strengthen the HIV awareness of leaders is being implemented. Mass organisations, civil society organizations and business enterprises are actively involved in the national response to AIDS. Comprehensive HIV prevention initiatives are increasingly focused on behavioural change among the most-at-risk populations.<sup>120</sup>

**4.4.7** Expanding access to free antiretroviral treatment under the 'Four Free and One Care' policy was reported in March 2009 to have been a priority, with coverage extended to 1,190 counties in 31 provinces (autonomous regions and municipalities). Standardised ART was strengthened, the national drug resistance monitoring system was established and a pilot second-line drug trial was launched. Comprehensive treatment models, prevention of opportunistic infection treatment and traditional Chinese medicine treatment were under exploration, while care and support have been further intensified. While there have been impressive achievements in the national response to AIDS, a number of core challenges remain. These are outlined under seven key areas, namely: (1) programme management and accountability; (2) awareness campaigns and anti-discrimination; (3) comprehensive interventions; (4) treatment, care and support; (5) all society involvement; (6) capacity-building of response teams; and (7) monitoring and evaluation systems.<sup>121</sup>

**4.4.8** Human Rights Watch reported in December 2008 that China has won increasing praise for its aggressive response to the HIV/AIDS epidemic. Among other efforts, the Chinese government had sharply expanded HIV prevention programmes and increased the availability of 'first line' HIV treatment medicines. Particularly promising have been

<sup>115</sup> COIS Report, China, section 30.4, 24 August 2011 [China Report](#)

<sup>116</sup> COIS Report, China, section 30.21, 24 August 2011 [China Report](#)

<sup>117</sup> USSD Human Rights Report 2010 [China Report](#)

<sup>118</sup> COIS Report, China, section 30.23, 24 August 2011 [China Report](#)

<sup>119</sup> COIS Report, China, section 30.8, 24 August 2011 [China Report](#)

<sup>120</sup> COIS Report, China, section 30.7-8, 24 August 2011 [China Report](#)

<sup>121</sup> COIS Report, China, section 30.12, 24 August 2011 [China Report](#)

community-based programs targeting drug users that have increased the availability of methadone therapy to address opioid drug dependency. Yet, despite these advances, harsh law enforcement practices and extended confinement of drug users in detoxification and RTL centres continued, impeding efforts to provide effective drug dependency therapy and ignoring the HIV prevention and treatment needs of drug users. Many Chinese AIDS victims continue to die prematurely because of the strong social stigma attaching to those who have been diagnosed.<sup>122</sup>

- 4.4.9** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** There is no policy which precludes the enforced return to China of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Chinese nationals may return voluntarily to any region of China at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.4** The AVR programme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in China. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Chinese nationals wishing to avail themselves of this opportunity for assisted return to China should be put in contact with Refugee Action. Details can be found on Refugee Action's web site at:

[www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

<sup>122</sup> COIS Report, China, section 30.13-14, 24 August 2011 [China Report](#)

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